UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
Docket #15cr643
UNITED STATES OF AMERICA, : 1:15-cr-00643-PKC

Plaintiff, :

- against - :

JASON GALANIS, et al., :
New York, New York
Defendants. : September 24, 2015

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PROCEEDINGS BEFORE
THE HONORABLE RONALD L. ELLIS
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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THE CLERK: We're here in the matter of the initial presentment, 15cr643, United States of America versus Jason Galanis. Attorneys, please state your name for the record starting with the government.

MR. BRIAN BLAIS: Good afternoon, Your Honor, Brian Blais, Andrew Bauer and Dina McLeod for the government.

THE COURT: Good afternoon.

MR. PAUL GRAND: Paul Grand and Christopher Robbins for the defendant.

THE COURT: Good afternoon. Okay, this is for presentment?

MR. BLAIS: That's correct, Your Honor, it's been referred for presentment only. We do have a date scheduled for the arraignment which I can inform the Court of later in the proceeding.

THE COURT: Okay. Would the defendant please stand. You're Jason, is it Galanis?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I'm Judge Ellis, the purpose of this proceeding is to inform you of certain rights that you have, to inform you of the charges against you, to consider whether counsel should be appointed for you, and to consider the issue of bail. Do you understand that?

THE DEFENDANT: Yes, I do, Your Honor.

THE COURT: Date and time of arrest?

MR. BLAIS: Your Honor, the defendant was arrested this morning at approximately 9 a.m.

THE COURT: Mr. Galanis, you have the right to remain silent, you are not required to make any statements. Even if you have made any statements to the authorities you need not make any further statements. Anything that you say can be used against you. You have the right to be released either with conditions or without conditions and pending trial unless I find that there are no conditions that would reasonably assure your presence in court and the safety of the community. Do you understand that?

THE DEFENDANT: Yes, I do, Your Honor.

THE COURT: You also have the right to be represented by counsel during all court proceedings, including this one, and during all questioning by the authorities. If you cannot afford an attorney, I will appoint one today to represent you. Do you understand that?

THE DEFENDANT: Yes, I do.

THE COURT: Now I understand that Mr. Grand has been retained to represent you, is that correct, Mr. Grand?

MR. GRAND: I’m here to represent him for purposes of bail today, he is represented by Tom Mazzucco of San

Francisco who couldn't arrive here this quickly, but I represent another defendant in this case substantively, but I'm here for bail purposes today.

THE COURT: Okay, but you talked to Mr. Galanis about the conflict potential --

MR. GRAND: Of course. Of course.

THE COURT: Okay, and that's okay with you, Mr. Galanis, that he represents you for bail purposes here?

THE DEFENDANT: Yes, as I understand it, it's okay.

THE COURT: All right. And Mr. Grand, have you seen a copy of the indictment?

MR. GRAND: I have, Your Honor, I was given one this morning.

THE COURT: Have you reviewed with Mr. Galanis?

MR. GRAND: I have.

THE COURT: Waive any public reading of it?

MR. GRAND: Yes, of course.

THE COURT: Bail?

MR. BLAIS: Yes, Your Honor. We have agreement on virtually all of the terms of a proposed bail package. There is one proposed condition that there is disagreement about. So if I can outline the terms on which we agree, and then I'll set forth the term about which we disagree.

So the terms about which we agree are a $10 million personal recognizance bond to be secured by the signatures of four financially responsible persons, and $3 million of either cash or property having equity value of at least $3 million. And we understand that the defendant intends to satisfy that term by pledging a property that he owns here in the City of New York that's referenced in the Pretrial Services report that we understand had equity in the sufficient amount over the $3 million threshold. In addition, the defendant is to surrender his passport and we understand that that has happened, the agents who arrested him this morning are in possession of his passport and he is to make no new further applications for travel documents. The defendant's travel is to be restricted to the Central District of California where he resides, the Northern District of California where his attorney is located, and the Southern and Eastern Districts of New York as necessary for court appearances. Regular Pretrial supervision. And there is agreement on all of those terms.

The one term that there is disagreement about is a special condition that the government is seeking that would prohibit the defendant from serving as an officer, director, consultant, investment banker, or advisor to any public or private company.

THE COURT: Was it to any public or private?

MR. BLAIS: Correct.

THE COURT: And that was, you said, a director --

MR. BLAIS: Officer, director, consultant, investment banker, or advisor to any public or private company. And we're happy, at the appropriate time, Your Honor, to offer our rationale for that prohibition.

THE COURT: Okay, before we get to that point, is this something that, does he serve in this capacity, or are you talking about things he would have to do in the future or things that he'd have to give up, or do you know for sure?

MR. BLAIS: Your Honor, I think the essence of what the defendant does on a daily basis is serve in these various capacities for several public and private companies, so this is something he is actively engaged in doing, not simply a prospective possibility that may occur in the future.

THE COURT: All right. Is that correct, Mr. Grand, you agree on all of the provisions except this special provision?

MR. GRAND: We have agreed on all of the terms except the last one, Your Honor, and that is because the last one is what he does. Now I can understand a condition being that he can't violate any law while working, but I don't understand that it is a permissible condition of bail to tell a man he cannot work at his job. Justice Douglas had that issue before him several years ago and made it very clear that that's not an acceptable condition of bail. We, of course, will accept that condition if it's, is it self conditioned on illegally advising such a company or working as an investment banker for such a company, but to tell a man he can't do what he does in life, and what he should be doing is working at Starbucks, or what he should be allowed to is working at Starbucks, as the prosecutors told me this morning, it's not appropriate. It's just not the purpose of the condition of the bail laws which is to insure appearance, not perfection, just appearance.

THE COURT: Okay, I guess we're at that point why don't you tell me why.

MR. BLAIS: Yes, thank you, Your Honor. In addition to insuring the defendant's appearance in Court, that is obviously one important purpose of the bail statutes, but a second important and necessary purpose is to protect the safety of the community. We are advancing this particular prohibition because we believe it is necessary to protect the financial safety of the community at large. I think it is the government's position that the essence of the work that Mr. Galanis has been doing since at least 2007, is engaging in various fraudulent transactions in the capacities that we've outlined as part of the prohibition. As I said, dating back to 2007, in 2007 Mr. Galanis was, in a settlement with the SEC, barred from serving as an officer or director of a public company for a period of five years. That stemmed from a settlement of a complaint that alleged that he filed a false 10Q, which is a quarterly financial filing that is made with the SEC, that he filed a false 10@ that, among other things, had misstated financial results for a company called Penthouse International, which is the publisher of Penthouse Magazine. And that, among other things, in addition to having the misstated financial information, also bore the unauthorized electronic signature of the chief executive officer and chief financial officer of that particular company, in essence, indicating that that officer had, under the provisions of Sarbanes-Oxley, reviewed and signed off on those financials when, in fact, that was not what had happened.

So that was in 2007, and the defendant was operating under a five year officer and director bar that obviously extended into 2012. Among the allegations in our indictment is that the defendant violated that particular bar, so a judicially imposed officer and director bar, and in effect functioned as an officer and director of a public company called Gerova Financial Group Limited. The essence of the allegations, at least in counts one through seven of the indictment, is that Mr. Galanis exercised at least de facto control of Gerova and caused it to do other things, to do a number of things that inured to his benefit, among which were causing Gerova to issue $5.3 million freely trading shares, shares that were worth about $72 million, causing Gerova to issue those $72 million worth of shares to a foreign nominee who had made representations that he would comply with various SEC exemptive requirements that would allow him to receive those freely trading shares. And among the representations that individual made was that he would not sell those shares back into the United States, that's what the exemptive requirements required. Instead, Mr. Galanis and his co-conspirators, caused that foreign nominee to deposit those shares into US brokerage accounts, they were then sold on the US market, or at least a portion of them were sold on the US markets, and the proceeds of those sales transferred to various accounts associated with Mr. Galanis and his co-conspirators to, as we allege in the indictment, the tune of approximately $20 million.

So our allegations are even when operating under an officer and director bar in 2010, Mr. Galanis caused a public company to issue a large amount of shares, shares that doubled the public flow of the company, without proper disclosure, and for the enrichment and benefit of Mr. Galanis. We also believe that Mr. Galanis' fraudulent activity continued even beyond the time period charged in the indictment. We are aware of a circumstance in 2013, this is not, to be clear, not conduct that Mr. Galanis has been charged criminally with, although it is our belief that it does constitute criminal conduct.

There was another individual, an individual by the name of Matthew Jennings who has pled guilty to the conduct I'm about to describe, in the Southern District of California. Mr. Jennings was approached in 2013 by an individual who at that time was cooperating with the Southern District of California, and Mr. Jennings was asked by that individual who was an investment advisor, do you have any shares of a company that I can put in my client's account and for which I, the investment advisor, can get compensation, i.e. I want a kickback from getting those shares. Who did Mr. Jennings approach when he was approached by this individual cooperating in the Southern District of California, he approached Mr. Galanis and said, Mr. Galanis, do you have any shares that you could contribute to this investment advisor friend that I have who is also looking for compensation. And Mr. Galanis' response is, well I'm involved with a public company called Loton, L-O-T-O-N, and, yes, I have available shares in that company. Mr. Jennings asked Mr. Galanis, well the individual that I'm with is looking for a kickback in the range of 20 to 30 percent to put those shares in his client's account, and Mr. Galanis said something to the effect of that's fine, we can work that out.

THE COURT: Let me stop you at this point because I understand that there are a number of allegations in the indictment and I'm not sure how much of it you want to go through either in the indictment or not in the indictment, but as you point out, we are talking about allegations --

MR. BLAIS: That's correct.

THE COURT: And, therefore, you know, assuming that I take as true the fact that these are part of the indictment, it's still, we still have to cope with the notion of bail is for the purpose of insuring the safety of the community and his appearance in court. And one of the issues raised by Mr. Grand, and in the context of the Bail Act it makes sense, that is that he says, well, with the restrictions that you're placing on him, would he be able to engage in his occupation. Now if your position is that he cannot engage in his occupation without criminal activity, so be it, but if we're going to place a restriction on somebody such that they cannot be gainfully employed, we have to fall back on the notion that it still has to be the least restrictive means possible. And if what I'm hearing is that, I mean I've had people who defrauded the government because they were doing taxes, I've had people who were involved in making improper representations to banks, I mean those allegations, the question is whether or not it is, first of all, whether or not it is appropriate, and then whether or not it's necessary to tell them that they cannot engage in their livelihood because they've been charged under and indictment. And while he may have agreed to certain restrictions as part of an agreement, you know, it's like settlements in anything, you can agree to restrictions, but that's not what the Bail Reform Act is about, it's about what the Court can impose. And if he wants to agree to something, that's different, regardless of why he wants to do it, and as to whether or not it's the least restrictive means to insure both his appearance and the safety of the community.

I gather, however, from your description of it, what we are talking about is not the appearance, but the safety of the community?

MR. BLAIS: That's correct, Your Honor.

THE COURT: And in that case, it's a higher standard because if you are talking about the safety of the community it's clear and convincing evidence that there is no provision that can be set forth that would keep, would prevent the community from being I guess adversely affected by him continuing to engage in his activities, since you both agree that this is what he does.

MR. GRAND: I also think, Your Honor, that the reference to safety of any other person in the community is talking about physical safety. I don't think it's talking about something as abstract as whether the person tells the truth all the time or doesn't tell the truth all the time. I just don't think that's what, in the context, that word is meant to convey.

THE COURT: Well, whether, and I know there is some authority for the notion that economic harm to the community can be a basis for it, it's still the question of what, first of all, whether or not it's been demonstrated by clear and convincing evidence that there is no way to address the potential harm without telling him he can't do what he does and I'm still, for now, if the government is trying to convince me, so if they can't convince me then we may not get to the rest of your argument.

MR. BLAIS: Yes, Your Honor, and I don't disagree with the standards as Your Honor articulated.

THE COURT: That's always comforting.

MR. BLAIS: We do need to demonstrate by clear and convincing evidence that there is a danger to the community. And the reason I'm outlining the various circumstances and describing the allegations in the complaint, and the other conduct that we're aware of, is it our position that the essence of what Mr. Galanis does as his employment is commit fraud. And that prohibiting his work in the various occupations that I outlined, is necessary to prevent the ongoing commission of fraud. I can say even over and above the circumstances that I've outlined --

THE COURT: So is he defrauding the people that he's an officer, director, consulting with, or advisor, or are you protecting somebody other than that?

MR. BLAIS: I think we're protecting the shareholding community in general, and the, yes, the officers, directors, and other employees of these various companies. You know, we can say, Your Honor, that in addition to the circumstances that I've already outlined that have an ongoing active investigation involving a fraud that is ongoing as we speak, involving an asset management firm that the defendant is essentially controlling behind the scenes and causing folks in that investment management firm to purchase assets that don't match the standards for the various account holders at that asset management firm. There are real victims who are being impacted by the defendant's ongoing work in these fields of occupation.

THE COURT: But let me ask you a different question then. I take it that what we're talking about are things that he's doing right now that you know about.

MR. BLAIS: In part, things that are happening right now, and in part, things that have happened in the past.

THE COURT: Okay. And are the activities that you're describing, because sometimes when there, when the government is trying to impose a restriction, they may not be able to know about what it is that the person is doing, you know, whether it's possession of a gun or committing a crime, you know, you won't know whether or not they're doing that. Are these the kind of activities that he could engage in where you wouldn't know about it?

MR. BLAIS: Where we wouldn't know about it?

THE COURT: Yes.

MR. BLAIS: Yeah, of course. I mean, of course, he could continue to consult with companies that he's working with and we wouldn't necessarily know about them. There obviously are also investigative tools at our disposal that we're continuing to deploy that allow me to represent to Your Honor that there's an active investigation that has yielded some of the things that I've just told. So, yes, we have some ways of knowing about what he's doing, and in other circumstances, he may be continuing to engage in these activities in ways that we can't.

THE COURT: Okay. Well let me turn to Mr. Grand for a moment. Since we're going to be imposing a standard that, assuming that what the government says is true, that Mr. Galanis is engaging in activity which would be detrimental to the community, what, do you have any suggestions on how that could be addressed by the Court?

MR. GRAND: I think that your selection of the word detrimental is a very interesting one because one man's detriment may not sound like a detriment to somebody else. I think that what he should, a condition of bail should be that whatever activities he engages in he can't be violating the securities laws, or broader than that if you want and that's more than sufficient. I mean as a bottom line, I suppose, to satisfy the prosecution, we could offer the things that they are seeking with respect to public companies, and they can perhaps satisfy their need for conditions that way.

THE COURT: I don't know what the odds are of him serving in a public company in any of these capacities. Perhaps the government can --

MR. BLAIS: Your Honor, I don't know that that limitation is acceptable for us, the ongoing fraud that I just described is taking place at a private company, so we're concerned about the breadth of the restriction. Now offering up that he not violate the securities laws, I mean that's a condition of everyday existence, one should never violate the securities laws in the US, and it's also the requirement of everyone who is on bail that they commit no additional federal, state or local crimes. So I don't know that that advances a particular concern that we have about the fact that the essence of this defendant's ongoing employment is a perpetuation of various frauds.

MR. GRAND: Your Honor, if they thought he was engaged in a crime every single day of his life doing whatever he does, they wouldn't have investigated this case for four and a half years to come up with this case. He has been aware of this investigation for four and a half years, he is here today, he brought himself here today from California, we're talking about bail, not solving all of the anxieties of the United States government.

THE COURT: Any more from the government?

MR. BLAIS: Judge, there is one other issue that I think is responsive to your question, and it pertains to a matter that is currently under seal. So would it be possible to come address the Court at sidebar?

THE COURT: You can, you can address me at sidebar, whether or not it will remain at the side, we'll decide that. Come on.

(SIDEBAR CONVERSATION HELD OFF THE RECORD)

THE COURT: All right, let me recapture the message I conveyed to the parties there, and that is a sense, we're talking about Mr. Galanis' activities, if he is going to engage in anything that's illegal, if he's going to be dishonest about it nobody is going to know about it anyway. And so the first thing is, is that we want to make sure that he's, to the extent that he has an of these associations, the Pretrial officer knows about it, and that will be certainly a disincentive for Mr. Galanis to do anything illegal with respect to that. I do find that when you have to disclose who you're working with, it always brings up the possibility that if you are doing something wrong somebody will find out about it. So the condition will be that while he continue to work in his job, whatever it is, he has to disclose the people that he is either an officer, director, consultant or advisor to, or an investment banker to, to Pretrial Services. It's a disclosure requirement and so, so Pretrial Services knows what their, their requirement is only to record what he's saying, they don't have to follow up on it to make sure he's doing anything, but Mr. Galanis needs to understand that his failure to disclose would be a violation of his conditions of release. But, you know, if he discloses that he's working with AT&T and there is nothing otherwise wrong with that, then there is no violation. But --

MR. BLAIS: Judge?

THE COURT: Yes.

MR. BLAIS: I'm sorry, can we take defense counsel up on his offer from earlier to make, for our request of prohibition apply to public companies and then your modified condition for private companies?

THE COURT: No. We're going to do it, I think full disclosure is enough, good try, but, you know, this really, you know, I mean if he, it reminds me of what my son is always telling me is that you have these shows in which somebody has committed a murder and then it turns out he lied about something, and they say, oh, you lied, and they say, well he's a murderer and you're concerned that he's a liar. I mean if he's going to be committing all these frauds, you know, yeah, he might lie about it and he'd have every inventive to lie about it, but the disclosure means that we don't have anybody he's working with that we don't know about. And it seems to me that that's, at this point, the least restrictive means to address the problem that the government mentioned. And so that's the condition as modified by the Court.

MR. BLAIS: Thank you, Your Honor.

THE COURT: As I said, I just want the defendant to understand that, and I've had these kind of cases where, you know, you can't -- he obviously can engage in a livelihood, but understanding that you must let the Pretrial Services officers to know I'm working with these companies, that will be, I assume that's been the incentive for most people not to engage in any bad behavior with those companies.

Now, let me write that down. That's $10 million personal recognizance bond, four financial responsible persons. Okay, well, you did an either/or with the money or the property, do we want to make it the property, it's easier to indicate? Okay. and you can always, you can always change it if he has an extra $3 million hanging around.

MR. BLAIS: Your Honor, I don't know that I recited this in my recitation of the conditions, but we also have agreement that the defendant would be released on his signature today with two weeks to satisfy the remaining conditions. That would include the pledge of the property and the signatures of the cosigners.

THE COURT: You did not say that, but --

MR. BLAIS: I apologize.

THE COURT: I'm marking it now. Two weeks --

MR. BLAIS: Sorry, just to repeat for Mr. Grand, I didn't repeat this earlier, but I think we have agreement that the defendant would be released on his signature today with two weeks to meet the remaining conditions.

THE COURT: And two weeks, is that October 7th? No, that's October 8th. Wait a minute, what day are we, it's Thursday, October 8th. Oh, and this may be overly beating a dead horse, but you said officer, director, consultant, investment banker --

MR. BLAIS: Or advisor.

THE COURT: Advisor, are those the only nouns that you want to put in there?

MR. BLAIS: That's what we had listed, we didn't have any others.

THE COURT: Okay. Nobody wants to take out a thesaurus or anything to make sure we've got that covered? Okay. It all depends on what the meaning of "is" is. I always add the plus travel point when we have the districts just in case somebody determines that if he's over the air in Illinois he's outside the district. But presumably he can fly from either of those districts in California and land in either the Southern or Eastern District. And right now you said you already, he surrendered his passport already?

MR. BLAIS: That's correct, Your Honor.

THE COURT: Do you have a property in mind or do we just want to leave it as $3 million in equity in property?

MR. GRAND: I actually don't have the address. What's the address of the property?

THE DEFENDANT: 260 West Broadway, Unit 1, New York, New York.

THE COURT: Is there anything else?

MR. BLAIS: Yes, two things, Your Honor. One, just to inform the Court, and counsel for the defendant that the first conference before Judge Castel is scheduled for October 7th at noon.

THE COURT: At 12:00?

MR. BLAIS: Correct. And then the second thing, Your Honor, is that the government would, I believe with consent of the defendant, move to exclude time between today and the 7th. We are hopeful for producing at least the first wave of discovery in advance of the October 7th conference.

THE COURT: Mr. Grand?

MR. GRAND: That's fine, Your Honor.

THE COURT: Time will be excluded until October the 7th. Anything else?

MR. BLAIS: Nothing further from the government, Your Honor.

MR. GRAND: Thank you very much, Your Honor.

THE COURT: Thank you, we're adjourned.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, United States of America versus Jason Galanis, et al., Docket #15cr643, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Carole Ludwig

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Signature________________________________________

Date: December 6, 2015